IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5647 of 2007 (O&M)

Date of Decision: 2.11.2007

Amrik Singh ...Petitioner

Vs.

Balwant Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.S.S.Rangi, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order passed by the learned trial court vide which application moved by the petitioner for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure (for short the Code) has been ordered to be dismissed.

The plaintiff-respondents had filed a suit for permanent injunction restraining the defendant, his servants or agents from interfering or cause to interfere in the peaceful and cultivating possession of the plaintiffs over the land in dispute. It was also pleaded in the suit that the

sale deed dated 16.9.1997 alleged to have been got by the defendant from Gurdial Kaur does not confer any right upon him being a forged document.

In the said suit an application was moved by the petitioner under Order 7 Rule 11 of the Code to reject the plaint on the plea that on an earlier occasion the plaintiffs had filed a suit against Mohinder Kaur in which an application was made under Order 1 Rule 10 of the Code to implead the petitioner herein as party to the said suit on the ground that in the written statement it was pleaded by the defendant that the property in dispute stands sold to the petitioner herein. The application for amendment was dismissed and revision filed against the said order was also dismissed by this court.

The contention of the learned counsel for the petitioner, is that once the application for impleading petitioner in the suit filed by the plaintiffs earlier against Mohinder Kaur stood dismissed the present suit was not competent. It is also the case of the petitioner that as this court had prima facie held the application to be highly belated as the sale deed was in the knowledge of the plaintiff-respondents when he filed the original suit, it would be presumed that the said sale deed was upheld and therefore, the plaintiffs no right to challenge the same again in the subsequent suit.

While considering an application under Order 7 Rule 11 of the Code the court is to see whether the suit as framed disclosed any cause of action. Even if, there is a previous matter which stands decided between the parties the defendant would only get a right to raise a plea of res judicata which does not automatically bar the maintenance of the suit unless the said plea is proved on record by proving the same by leading sufficient

evidence which in the present case may not even arise as the parties in the present suit are different from that in the previous suit as the application moved by the respondent in earlier suit for impleading petitioner was dismissed.

The learned trial court therefore, was justified in dismissing the application by holding that the plaint discloses cause of action which has to be decided after the petitioner files written statement to the suit.

The order passed by the learned trial court does not suffer from any illegality which may call for interference by this court in exercise of revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

2.11.2007
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